RESTORATION OF LAND TO THE COLORADO RIVER INDIAN RESERVATION

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

S. 1652

TO RESTORE CERTAIN LANDS IN ARIZONA TO THE COLORADO RIVER INDIAN RESERVATION

AUGUST 19, 1982

WASHINGTON, D.C.

U.S. GOVERNMENT PRINTING OFFICE
12-427 O WASHINGTON : 1982

S961-5

SELECT COMMITTEE ON INDIAN AFFAIRS

WILLIAM S. COHEN, Maine, *Chairman*

BARRY GOLDWATER, Arizona	JOHN MELCHER, Montana
MARK ANDREWS, North Dakota	DANIEL K. INOUYE, Hawaii
SLADE GORTON, Washington	DENNIS DeCONCINI, Arizona

TIMOTHY C. WOODCOCK, *Staff Director*

CONTENTS

	Page
S. 1652	2
Bloxham, Steven, tribal attorney, Colorado River Indian Tribes	15
Brock, Louise F., Ehrenberg, Ariz., prepared statement	9
Carruthers, Garrey E., Assistant Secretary for Land and Water Resources, Department of the Interior	11
Prepared statement	13
Drennan, Anthony, Sr., chairman, Colorado River Indian Tribes	15
Prepared statement	17
Driessen, Paul K., attorney-adviser, Office of Legislative Counsel, Department of the Interior	11
Laffoon, Harry, vice chairman, Colorado River Indian Tribes	15
Savilla, Elmer, executive director, National Tribal Chairman's Association	15

MATERIAL SUBMITTED FOR THE RECORD

Letter from Jack L. Corkill, Desert Material Co., dated August 16, 1982; to Timothy C. Woodcock, staff director, Senate Select Committee on Indian Affairs	8
Letter from Thadd Baker, Yuma, Ariz., dated August 12, 1982; to Senator Cohen	9
Letter from Walter Scott, Blythe, Calif., dated August 12, 1982; to Senator Cohen	9
Prepared statement of Louise F. Brock, Ehrenberg, Ariz	9
Letter from Steven J. Bloxham, tribal attorney, Colorado River Indian Tribes; to Senator Goldwater	24

APPENDIX

Additional Material Received for the Record

Letter from Ted and Gae Brock, Ehrenberg, Ariz.; to Senator Cohen	29
Prepared statement of Robert B. Bayles, Ehrenberg, Ariz	30
Letter from Ronald P. Andrade, executive director, National Congress of American Indians; to Senator Cohen	32

RESTORATION OF LAND TO THE COLORADO RIVER INDIAN RESERVATION

AUGUST 19, 1982

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, D.C.

The committee met, pursuant to notice, at 9:05 a.m., in room 457, Russell Senate Office Building, Senator Barry Goldwater (acting chairman) presiding.

Present: Senator Goldwater.

Staff present: Tim Woodcock, staff director; Peter Taylor, general counsel; Virginia Boylan, staff attorney; Twinkle Thompson, staff professional; and John Mulkey, staff professional.

Senator GOLDWATER. The hearing will come to order.

This oversight hearing is to receive testimony and statements on S. 1652, a bill I introduced at the request of the Colorado River Indian Tribes to return some 16,000 acres of public lands to the tribes.

This land is known as the La Paz area. The Colorado River Indian Reservation was created in 1865 and was extended twice by 1875. The extensions were to provide a buffer between the Indian lands and the mineral prospectors and cattlemen.

In 1875, in an effort to clearly define the extent of the reservation trust land, the Commissioner of the General Land Office, pursuant to a request of the Commissioner of Indian Affairs, arranged for a survey of the reservation by Mr. Chandler Robbins.

Mr. Robbins' survey located its southern boundary at La Paz Arroyo. This survey was reconfirmed by the 1912 Harrington resurvey and the location was upheld finally by the Commissioner of the General Land Office in 1913 and 1914.

In spite of and contrary to the surveys, the lands were removed from the reservation by the Executive order of November 22, 1915, as the result of erroneous reasons and without any compensation.

Today, the Colorado River Indian Tribes would like to have their lands returned because of issues of historical ownership, legal rights, and agricultural need.

I would like to make it perfectly clear that the return of the La Paz lands will be subject to valid existing rights. All rights and claims must be examined closely and appropriate compensation provided for before any transfer takes place.

Rights-of-way, easements, telephone lines, and the continuation of sand and gravel contracts, along with material sites, must be considered.

At this point, without objection, I will place a copy of S. 1652 in the hearing record.

[The bill follows:]

II

97TH CONGRESS
1ST SESSION

S. 1652

To restore certain lands in Arizona to the Colorado River Indian Reservation.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 23 (legislative day, SEPTEMBER 9), 1981

Mr. GOLDWATER (for himself and Mr. DECONCINI) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

---

A BILL

To restore certain lands in Arizona to the Colorado River Indian Reservation.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following described lands erroneously removed from the Colorado River Indian Reservation by Executive Order Numbered 2273 (November 22, 1915) are hereby restored to the reservation and, subject to all valid existing rights, shall be held by the United States in trust on behalf of the Colorado River Indian Tribes:

Beginning at a point at the corner common to townships 3 and 4 north, ranges 21 and 22 west of the

Gila and Salt River meridian, Arizona, which is the designated southeast corner of the present reservation pursuant to Executive Order Numbered 2273;

thence easterly along the township and section line common to section 6, township 3 north, range 21 west and section 31, township 4 north, range 21 west of the Gila and Salt River meridian for 79.15 chains to angle point 2 established by G. P. Harrington in 1912 near the corner common to sections 5 and 6, township 3 north, range 21 west and sections 31 and 32, township 4 north, range 21 west of the Gila and Salt River meridian;

thence south 71 degrees 30 minutes east 31.77 chains to angle point 3 established by Harrington (1912) and presently located on the line common to lots 3 and 6 of section 5, township 3 north, range 21 west of the Gila and Salt River meridian;

thence north 88 degrees 15 minutes east 73.23 chains to angle point 4 established by Harrington (1912) and presently located at the corner common to lots 3, 7, and 8 of section 4, township 3 north, range 21 west of the Gila and Salt River meridian;

thence south 81 degrees 00 minutes east 26.32 chains to angle point 5 established by Harrington (1912) and presently located along the line common to

lots 2 and 6 of section 4, township 3 north, range 21 west of the Gila and Salt River meridian;

thence south 63 degrees 30 minutes east 58.83 chains to angle point 6 established by Harrington (1912) and presently located along the line common to lots 2 and 8 of section 3, township 3 north, range 21 west of the Gila and Salt River meridian;

thence north 86 degrees 00 minutes east 24.62 chains to angle point 7 established by Harrington (1912) and presently located along the line common to lots 1 and 6 of section 3, township 3 north, range 21 west of the Gila and Salt River meridian;

thence south 52 degrees 30 minutes east 25.23 chains to angle point 8 established by Harrington (1912) and presently located along the line common to lots 4 and 10, section 3, township 3 north, range 21 west of the Gila and Salt River meridian;

thence south 22 degrees 00 minutes east 8.80 chains to angle point 9 established by Harrington (1912) and presently located along the line common to lots 5 and 10, section 3, township 3 north, range 21 west of the Gila and Salt River meridian;

thence south 13 degrees 30 minutes east 12.25 chains to angle point 10 established by Harrington (1912) and presently located along the line common to

lot 5 of section 3 and lot 1 of section 10, township 3 north, range 21 west of the Gila and Salt River meridian;

thence south 44 degrees 00 minutes east 16.10 chains to angle point 11 established by Harrington (1912) and presently located along the line common to lots 1 and 5 of section 11, township 3 north, range 21 west of the Gila and Salt River meridian;

thence south 17 degrees 00 minutes east 15.00 chains to angle point 12 established by Harrington (1912) and presently located along the line common to lots 1 and 5 and approximately at the common corner of lots 1, 2, and 5 of section 11, township 3 north, range 21 west of the Gila and Salt River meridian;

thence south 53 degrees 30 minutes east 27.25 chains to angle point 13 established by Harrington (1912) and presently located along the line common to lots 2 and 7 of section 11, township 3 north, range 21 west of the Gila and Salt River meridian;

thence south 54 degrees 30 minutes east 14.29 chains to angle point 14 established by Harrington (1912) and presently located along the line common to lots 3 and 7 of section 11, township 3 north, range 21 west of the Gila and Salt River meridian;

5

thence south 44 degrees 30 minutes east 19.21 chains to angle point 15 established by Harrington (1912) and presently located along the line common to lots 3 and 8 of section 11, township 3 north, range 21 west of the Gila and Salt River meridian;

thence south 53 degrees 30 minutes east 159.60 chains to angle point 16 established by Harrington (1912) and presently located along the line common to lot 5 of section 18 and section 19 of township 3 north, range 20 west of the Gila and Salt River meridian;

thence south 65 degrees 00 minutes east 6.05 chains to angle point 17 established by Harrington (1912) and as presently located on a line common to lot 5 of section 18 and section 19 of township 3 north, range 20 west at the southeast corner of lot 5, which as reestablished will also serve as the southeast corner of the Colorado River Indian Reservation;

thence north 1 degree 33 minutes east 409.64 chains to angle point 18 established by Harrington (1912) on the boundary line of lot 4, township 4 north, range 20 west of the Gila and Salt River meridian;

thence north 6 degrees 36 minutes east 66.17 chains to the corner common to the southwest corner of lot 4, section 18 and the northeast corner of lot 1, section 19, township 4 north, range 20 west of the

Gila and Salt River meridian which is the southernmost point along the east boundary of the reservation as defined in Executive Order Numbered 2273;

thence westerly along the south boundary line of the reservation as defined in Executive Order Numbered 2273 to the corner common to sections 18 and 19, township 4 north, range 21 west and sections 13 and 24, township 4 north, range 22 west of the Gila and Salt River meridian;

thence southerly along the range line which constitutes the southeast boundary line as defined in Executive Order Numbered 2273 for approximately 3 miles to the point of beginning.

Senator GOLDWATER. At this time, I would like to offer an amendment to S. 1652 which would be added as a new section to the bill and it reads:

The restoration of said lands to the Colorado River Indian Reservation shall not serve as the basis for a claim to the rights to an additional water supply. Rights decreed to the Reservation by the United States Supreme Court in 1964 may be used, all or in part, on the restored lands.

This amendment should not be misconstrued as a punitive action, but rather as a recognition that there is a limited water supply available and that any diversion of water resources to the restored land areas will result in a diminishing of the supply to already serviced areas.

The tribe is not without recourse, however, as it should be able to divert and share water already available to the tribe to the restored land areas should it so desire.

Before calling our witnesses this morning, let me say this. I have some communications from people who were not able to appear before the committee this morning because of the distance involved.

One is a mailgram from Jack Corkill, Desert Material Co., Blythe, Calif.

The other is a statement from Louise F. Brock, Box 119, Ehrenberg, Ariz.

Without objection, those will be made a part of the record at this point.

[The material follows:]

[Mailgram]

DESERT MATERIAL CO.,
Blythe, Calif., August 16, 1982.

TIMOTHY C. WOODCOCK,
Staff Director, U.S. Senate Select Committee on Indian Affairs,
Washington, D.C.

For the record, our firm stands opposed to S. 1652, if and only if, in the restoration of Indian land erroneously removed by Executive Order 2273 (November 22, 1915) the intention of the Congress is to interfere in any manner with the validity of our presently existing "mill site claims" and/or current contractual agreements with the Department of Interior, Bureau of Land Management, including any and all rights, titles and interests therein.

We have, for more than a decade, operated a service sand and gravel mining operation on the property under consideration in S. 1652 and intend to mine this property for some time in the future.

In order to assure our future operation and justify our capital expenditure for rock crushing equipment we entered into a "duration of materials" contract with the Bureau of Land Management in 1970 and a "material sales contract" with the same agency in 1979 with renewal options.

Senate bill 1652 must, of necessity, address itself to three primary issues:

Firstly: Does the action under consideration impair existing contractual relations?

Secondly: Has due process been denied because of improper and inadequate notice to the affected holders of a vested interest? Additionally, is room 457 of the Russell Senate Office Building, Washington, D.C., the proper and rational setting for a matter of local concern some 3,000 miles distant?

Thirdly: Does this action under consideration violate the Constitution of the United States as a taking of a vested personal property right without just compensation?

Unless and until these major issues and their subsidiary extensions can all be answered in the negative, this S. 1652 must not leave your committee.

I would strongly urge you to conduct hearings at the local level in this matter because of its importance and impact on the citizens of this area.

Sincerely

JACK L. CORKILL.

YUMA, ARIZ., *August 12, 1982.*

Hon. WILLIAM S. COHEN,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, D.C.

DEAR SENATOR: Pursuant to your letter notice of August 2, 1982, I enclose herewith the statement of my clients, Marvin A. (Jack) Brock and Louise Brock of Ehrenberg, Arizona, who have a number of unpatented mining claims in the area of the proposed legislation.

Mr. and Mrs. Brock do not have the financial resources to appear before your committee in Washington, and request therefore that the statement be read into the record and incorporated into your hearings for consideration by the committee and the Senate.

Since there has been little, if any, publicity given to this proposed legislation in the Arizona area, I would recommend that the committee consider field hearings as well as hearings in Washington, so that the Ehrenberg and Parker, Arizona residents, as well as the Blythe, California residents, would have an opportunity to express themselves on this legislation. This legislation is local in nature, but will have an impact on all of the mining interests in this area.

Sincerely,

THADD BAKER.

BLYTHE, CALIF., *August 12, 1982.*

Hon. WILLIAM S. COHEN,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, D.C.

DEAR SENATOR: Having had mining claims in this area for many years and are presently engaged in a mining operation, we do hereby endorse the objections as listed in the attached statement of Louise F. and Marvin A. Brock.

We request that this bill S. 1652 be set aside pending field hearings and proper notification to all concerned parties.

Respectfully submitted,

WALTER SCOTT.

PREPARED STATEMENT OF LOUISE F. BROCK, BOX 119, EHRENBERG, ARIZ.

My name is Louise F. Brock, and I reside in Ehrenberg, Arizona with my husband, Marvin A. (Jack) Brock. We have been residents of Ehrenberg, Arizona for twenty years, and are engaged in the land development and mining business.

That neither my husband or I have the financial resources to appear personally before the Committee, and desire, therefore, that this statement be substituted as our oral testimony.

My husband and I are opposed to Senate Bill 1652, and request the Committee take no further action upon the same. The reasons for our objections are as follows:

1. There has been no publicity in the Ehrenberg area concerning the proposed bill, and if there were publicity, there would be a substantial number of objections made to this legislation. Contrary to the statements made by Senator Goldwater, to our knowledge, very few people in the Ehrenberg area are aware of this legislation, although many of the citizens will be directly affected by enactment of the same. Our only knowledge that a bill was pending was through the chance reading of an article in the Arizona Republic of Phoenix, Arizona, published on February 21, 1980. Upon reading the article, we immediately contacted Senator Goldwater's office, and after receiving a copy of the bill, expressed our opposition to the same.

2. The purpose of the bill, as indicated by Senator Goldwater, was to correct an apparent error on November 22, 1915 under a presidential order. We seriously challenge whether there was in fact an error made by our former president, and if

this is the substance of the bill, then the proper forum for such a correction should be in the courts, not in the halls of Congress. The judicial system is better equipped to afford all parties due process in the consideration of the alleged error.

3. The wording of the bill also is offensive to us. Under paragraph 1, the grant of property has the following language in it: "Subject to all valid existing rights." Does this mean all existing private rights? Public rights? Does it encompass easements, unpatented mining claims, or the myriad number of different property claims which a private individual might assert. In this connection, my husband and I are the owners of twenty-six (26) unpatented mining claims, which we have owned since approximately 1970. So that there is no misunderstanding, a list of our unpatented mining claims is attached to this statement as Exhibit "A", and is made a part of this statement.

The area in question encompassed by the proposed giveaway of public land is nothing but mountainous desert without access to water and with no possibility of irrigation or farm development. Simply speaking, the area is rocky desert area, and mining is the highest and best use. What the legislation in Congress proposes, therefore, is that the private individuals who have invested substantial sums of money in the development of their mining claims now must face a new foe, which is the Bureau of Indian Affairs and the Colorado River Indian Tribe, when the unpatented mining claims come up for patent. There is no vehicle expressed in the act for the protection of private parties, nor is there a forum to which a private party may take his case. I note also that there is no waiver of the sovereign immunity historically granted to the indian tribes. This immunity has been confirmed by the United States Supreme Court. A private miner, therefore, is powerless to bring suit against the tribe for infractions of their mining rights, or to litigate the arbitrary and capricious acts of the tribe. The net result of the proposed legislation, therefore, is to legally confiscate, without compensation, the mines of the miners in the area, leave them without a forum to litigate their grievances, and to impose upon them the bureaucracy of the Bureau of Indian Affairs as well as the Bureau of Land Management in the perfection of a mining claim.

If the government is bent on giving this property to the indian tribes, the legislation should provide for condemnation proceedings for existing, unpatented mining rights so that the damages can be quantified. Anything less than this procedure would amount to a confiscation of our property.

CLAIM NAME AND LOCATION

1. Whirley Girl: SW1/4 Sec. 25, T4N, R21W, G&SRB&M, Yuma County, Arizona.
2. Ferra #5: SW1/4 Sec. 25, NW1/4 Sec. 36, T4N, R21W, G&SRB&M, Yuma County, Arizona.
3. Sydalg Htur: SW1/4 Sec. 25, NW1/4 Sec. 36, T4N, R21W, G&SRB&M, Yuma County, Arizona.
4. Sydalg Htur AMENDED: SW1/4, SE1/4, Sec. 25, NW1/4, NE1/4, Sec. 36, T4N, R21W, G&SRB&M, Yuma County, Arizona.
5. Ferra #2 AMENDED: NW1/4, NE1/4, SE1/4 and SW1/4, Sec. 36, T4N, R21W, G&SRB&M, Yuma County, Arizona.
6. Ferra #1 AMENDED: NW1/4, SW1/4, Sec. 36, T4N, R21W, G&SRB&M, Yuma County, Arizona.
7. Sydalg Htur #2: NW1/4, SW1/4, Sec. 36, T4N, R21W, G&SRB&M, Yuma County, Arizona.
8. Ferra #4: NW1/4, Sec. 36, T4N, R21W, G&SRB&M, Yuma County, Arizona.
9. Ferra #3: SE1/4 Sec. 35, NW1/4, SW1/4, Sec. 36, T4N, R21W, G&SRB&M, Yuma County, Arizona.
10. Sydalg Htur #3: NW1/4, SW1/4, Sec. 36, T4N, R21W, G&SRB&M, Yuma County, Arizona.
11. Muleshoe #11: SW1/4, Sec. 36, T4N, R21W, G&SRB&M, Yuma County, Arizona.
12. Muleshoe #12: SW1/4, Sec. 36, T4N, R21W, G&SRB&M, Yuma County, Arizona.

13. Muleshoe #13: SW1/4, Sec. 25, T4N, R21W, G&SRB&M, Yuma County, Arizona.
14. Muleshoe #14: SW1/4, Sec. 25, T4N. R21W, G&SRB&M, Yuma County, Arizona.
15. Muleshoe #15: SW1/4, Sec. 25, T4N, R21W, G&SRB&M, Yuma County, Arizona.
16. Muleshoe #16: NE1/4 Sec. 35, NW1/4, Sec. 36, SW1/4, Sec. 25, T4N, R21W, G&SRB&M, Yuma County, Ariz.
17. Pair O'Jacks #1: NW1/4 Sec. 3, T3N, R21W, G&SRB&M, Yuma County, Arizona.
18. Pair O'Jacks #2: NW1/4 & NE1/4, Sec. 3, T3N, R21W, G&SRB&M, Yuma County, Arizona.
19. Pair O'Jacks #3: SW1/4 Sec. 34, T4N, R21W, G&SRB&M, Yuma County, Arizona.
20. Pair O'Jacks #4: SW1/4, Sec. 34, T4N, R21W, G&SRB&M, Yuma County, Arizona.
21. Pair O'Jacks #5: SW1/4, Sec. 34, T4N, R21W, G&SRB&M, Yuma County, Arizona.
22. Pair O'Jacks #6: SW1/4, Sec. 34, T4N, R21W, G&SRB&M, Yuma County, Arizona.
23. Pair O'Jacks #7: SW1/4 & SE1/4, Sec. 34, T4N, R21W, G&SRB&M, Yuma County, Arizona.
24. Pair O'Jacks #8: SE1/4, Sec. 34, T4N, R21W, G&SRB&M, Yuma County, Arizona.
25. Pair O'Jacks #9: SE1/4, Sec. 34, T4N, R21W, G&SRB&M, Yuma County, Arizona.
26. Pair O'Jacks #10: SE1/4, Sec. 33, T4N, R21W, G&SRB&M, Yuma County, Arizona.

Senator GOLDWATER. Now, I would like to ask Mr. Garrey Carruthers, Assistant Secretary for Land and Water Resources, Department of the Interior, to testify.

You may proceed as you see fit.

STATEMENT OF GARREY E. CARRUTHERS, ASSISTANT SECRETARY FOR LAND AND WATER RESOURCES, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY PAUL K. DRIESSEN, ATTORNEY-ADVISER, OFFICE OF LEGISLATIVE COUNSEL, DEPARTMENT OF THE INTERIOR

Mr. CARRUTHERS. Thank you, Mr. Chairman.

It is a pleasure to be with the Select Committee on Indian Affairs regarding S. 1652.

I have with me Mr. Paul Driessen of the Department in the Office of Legislative Counsel.

I would like to submit our testimony for the record, Mr. Chairman, and summarize our position.

Senator GOLDWATER. Without objection, so ordered.

Mr. CARRUTHERS. Our position is that we do not recommend enactment of S. 1652 at this time basically because it is not clear to us yet if the Indians have a valid claim on the 16,000 acres.

Consequently, I have asked a task force in the Department of the Interior, made up of a member of the Legislative Council, the Bureau of Indian Affairs, the Bureau of Land Management, and the Solicitor's Office to investigate these claims.

Our information to this date principally has been generated through the Bureau of Indian Affairs. We would like to get some additional views on the claims made by the Indians.

Second, we have a problem, Mr. Chairman, in that the President has asked that the management program of the sale of public lands program, established under Executive Order 12348 dictates a much greater restraint in offering less than fair market value conveyances. If the Indians are deemed to have a legal claim on the 16,000 acres, I see us able to make that transfer without any problem.

If, in fact, it is determined that they do not have a legal claim, then we are going to have a problem with the President's program on asset management of making it less than fair market value conveyance.

Perhaps we ought to consider a conveyance that might include money, if that were to be the case.

Third, the 16,000 acres in question, since 1915 has not been for the exclusive use of the Indians, which creates the problem of existing rights. If the bill passed, we would like for the bill to address how to compensate for those prior rights.

In our final point, you addressed, Mr. Chairman, earlier on with your amendment, our concern with the water rights and whether the bill would apply the *Winter's* doctrine or some other applicable priority water right issued if the land were transferred.

Mr. Chairman, I recommend this committee hold this issue in abeyance for 60 days until such time as I can get a report from my task force. If that is not possible, based upon the information I have today, the answer from the administration regarding the bill is no. Thank you.

Senator GOLDWATER. We certainly will take your suggestion under consideration.

Holding it in abeyance for 60 days would almost automatically mean that the bill could not be considered this year. We hardly have 60 days left.

Mr. CARRUTHERS. Mr. Chairman, would something more on the order of perhaps 30 days? Would that be of any use to you?

Senator GOLDWATER. Frankly, I do not think that having the bill considered this year, after so many years have gone by, is all that important. I am sure the tribes want the land. After all the years of not having use of the land, I do not think they would object to a few months wait until next year.

You see, I feel very close to this because my grandfather settled in La Paz in 1860. At that time there was no question it was Indian land. The Indians were more numerous than the non-Indians. It became necessary about 5 or 6 years later to move from the community of La Paz to a community that my grandfather founded and settled called Ehrenberg because the river in those days was a very wandering affair. It would wander sometimes as much as 10 miles away from the spot of La Paz where the steamships were supposed to land.

So I feel very strongly about the Indians and their regard for this land. Just wanting land for whatever commercial value may be involved is all right. But this is ancestral land that Indians have long had a proper claim to.

In fact, you will recall that we have acted in other areas, in that immediate vicinity, to guarantee the Indians' rights not being molested by the non-Indians.

We will hold this in abeyance until you are ready to testify on it. I do not want to influence your testimony, but I hope you will consider everything I have said.

Do you have anything else to add?

Mr. CARRUTHERS. No, Mr. Chairman.

Senator GOLDWATER. We thank you very much.

Your prepared statement will be placed in the record at this point.

[The statement follows:]

PREPARED STATEMENT OF GARREY E. CARRUTHERS, ASSISTANT SECRETARY FOR LAND AND WATER RESOURCES, DEPARTMENT OF THE INTERIOR

Mr. Chairman and Members of the Committee, I am pleased to have the opportunity to present the views of the Department of the Interior on S. 1652, a bill "To restore certain lands in Arizona to the Colorado River Indian Reservation."

We do not recommend enactment of S. 1652 at this time.

S. 1652, if enacted, would authorize the transfer of approximately 16,000 acres of public lands to the Colorado River Indian Reservation. The transfer would be subject to all "valid existing rights." The existing reservation consists of 268,900 acres, and approximately 2,000 tribal members live on it. At the outset, I would like to state that the tribe has no clear legal claim to the 16,000 acres in question.

The existing Colorado Indian Reservation was created by the Act of March 3, 1865 (13 Stat. 541), in part to prevent encroachment by the California gold rush upon traditional Mojave tribal lands. Within ten years after the establishment of the reservation, its southern boundary was extended twice by executive order, to provide a clearly defined natural boundary and a protective buffer between the Indians and mineral prospectors and cattlemen who were trespassing upon the reservation.

In 1875, in an effort to clearly define the extent of the reservation trust Commissioner of the General Land Office, pursuant to a request of the Commissioner of Indian Affairs, arranged for a survey of the reservation by one Chandler Robbins. This survey located its south boundary at La Paz Arroyo. The Robbins survey established the La Paz Arroyo as lying approximately four miles north of Ehrenberg, Arizona, and continuing easterly along the entire length of the arroyo to the crest of the mountains which lie to the east, a location which was confirmed by the only accepted resurvey (the Harrington resurvey of 1912, accepted in 1915). This location was affirmed by the Phoenix Register and Receiver and upheld by the Commissioner of the General Land Office in 1913 and 1914 following extensive hearings on the subject held in Parker, Yuma and Phoenix, Arizona, in early 1913. It is this land which S. 1652 addresses.

Historically, non-Indian protests over the location of the southern boundary have centered on two issues. Early disputes concerned the location of the arroyo described in the 1865 Act. Substantial data now supports the position that it is the arroyo which lies approximately four miles north of Ehrenberg and south of the old townsite of La Paz. Mining interests, however, contended that the correct arroyo was located north of the La Paz townsite.

A second matter in dispute involves the intent to include within the southeast corner of the reservation the specific uplands with which we are now concerned. The Phoenix Area Office of the Bureau of Indian Affairs prepared a report, dated October 15, 1974, which documents the intent to include the subject lands within the reservation. However, in 1915, President Wilson issued Executive Order 2273, which lawfully established new boundaries that varied from those established by previous executive order. The pending legislation would return to the tribe those lands which were removed from the reservation by executive order in 1915.

The Bureau of Indian Affairs' report has indicated that the initial reason for dispute over the southeastern boundary of the reservation was the interest of mining companies in land that was then anticipated might hold valuable ores. The Bureau of Indian Affairs' report documents the decisionmaking process that resulted in issuance of Executive Order No. 2273, which removed approximately 16,000 acres of land from the reservation and returned it to the public domain. Clearly, there were conflicting points of view between the Indian and non-Indian interests. The 1915 executive order did not favor the Indian viewpoint and returned the land to the public domain. This latest action brought the reservation back to its original boundaries, as established by the Act of March 3, 1865.

Although the controversy over this boundary has in the past centered around mineral exploration, the current interest of the tribes in obtaining this land is not based upon mineral value, but rather upon issues of historical ownership, agricultural need, and potential sand and gravel development. In the entire region surrounding the lands in question, there presently exist only a few patented mining claims, only one of which is upon the acreage at issue; that claim was patented after issuance of the 1915 executive order. Although there appear to be a number of unpatented claims in the region and on the lands in question, there is presently no significant mineral development activity in the region. Several rights-of-way have also been issued for the lands described in S. 1652. In addition, the State holds 1¾ sections in the 16,000-acre tract.

Having provided you with this background, I would now like to explain why we cannot support S. 1652 at this time.

It is not evident that the tribe has an enforceable legal claim to these lands. Further analysis of the legalities and equities of this case will be necessary before the Department can take a position on this issue.

We believe a more complete search of the land records is warranted, to determine if any valid claims existed prior to or at the time of the 1915 executive order that might have provided a basis for the boundary change effected by Executive Order 2273.

We are greatly concerned that the bill's present language does not adequately protect the rights of parties who, acting in good faith and without knowledge of the Indian claims, have established rights-of-way, easements, mining claims, roads or other uses on or across the lands. For example, the bill does not address what rights the holder of an unpatented mining claim has to take the claim to patent, explore and develop the mineral resource, and have reasonable access to the claim. We believe any "valid existing rights" provision should be specific enough in its terms as to be enforceable in a court of law.

The land transfer contemplated here also raises a number of questions about water right priorities, the application of the so-called Winter's Doctrine and the decision in *Arizona* v. *California*, and the potential impact on existing water rights. The lands in question have only ephemeral grazing and agricultural uses; that is, without irrigation, little vegetation other than cactus grows except during the period immediately after a rainfall. The fact that the tribe stresses agricultural need as a ground for carrying out the land transfer suggests an intent to acquire water rights dating back to the executive orders that extended the southern boundary of the reservation. This would adversely affect many existing water rights in the area.

The bill does not address the water issue at all, and we believe it is uncertain at best whether the "valid existing rights" language will protect existing water rights; it likewise does not resolve the question of what water rights priority the new Indian landowners would have vis-a-vis present water right claimants.

Finally, the land transfer proposed by S. 1652 will have to be carefully evaluated in light of Executive Order 12348, dated February 25, 1982, regarding management of Federal real property, before we can take a position on the bill. It is our continuing policy that less than fair market value transfer of Federal property which is excess or surplus to agency program needs is at variance with Executive Order 12348 under the Federal Property and Administration Services Act of 1949. We will, however, review this matter further.

Mr. Chairman, this concludes my prepared statement. I would be pleased to answer any questions you may have.

Senator GOLDWATER. Now we will call Anthony Drennan, chairman, Colorado River Indian Tribe, Parker, Ariz. We welcome you here. You may proceed.

STATEMENT OF ANTHONY DRENNAN, SR., CHAIRMAN, COLORADO RIVER INDIAN TRIBES, PARKER, ARIZ., ACCOMPANIED BY STEVEN BLOXHAM, TRIBAL ATTORNEY, AND HARRY LAFFOON, VICE CHAIRMAN, COLORADO RIVER INDIAN TRIBE; AND ELMER SAVILLA, EXECUTIVE DIRECTOR, NATIONAL TRIBAL CHAIRMAN'S ASSOCIATION

Mr. DRENNAN. Thank you, Mr. Chairman.

Mr. Chairman, my name is Anthony Drennan. I am chairman of the Colorado River Indian Tribe.

With me I have the vice chairman of the tribe, Harry Laffoon, and Steven Bloxham, the tribal attorney, and this morning I have asked Mr. Elmer Savilla, the executive director of the National Tribal Chairman's Association to be here with me this morning.

I am speaking here on behalf of the Indians of the Colorado River Indian Reservation. I want to thank you for the opportunity to appear before this committee.

I wish to speak today about an issue which for too long has been unresolved; the unjust removal of lands from the Colorado River Indian Reservation.

These traditionally occupied tribal lands were included within our reservation by Executive order in 1874. Nearly 16,000 acres forming the southeast corner of the reservation, known as the La Paz lands, were erroneously deleted by an Executive order in 1915, as the expedient solution to the political pressures of a single interest group. The tribes never received compensation for the La Paz lands.

I have come here to ask for your support for legislation to restore these lands to the Colorado River Indian Tribes. The tribes have worked hard to see their lands restored and we will not give up our efforts until the reservation contains all the lands which were reserved for our people.

The tribes of the Colorado River have occupied this area since time immemorial. Abundant prehistoric and historic evidence in the area supports this. Although settlers had been encroaching on Indian lands prior to 1862, in that year the discovery of gold brought a flood of miners into the La Paz area, creating the first major impact on the Indian way of life.

The Colorado River Indian Reservation was established in 1865 in response to this growth in order to protect Indian lands and secure a future for the tribes.

Squatters and bootleggers trespassed onto the reservation throughout this period, causing serious continual problems. Hoping to remedy this situation, Agent J. A. Tonner in 1873 requested the addition of lands to the reservation which would create an easily protected and defined border.

To that end the Executive orders of 1873 and 1874 added the La Paz lands. In 1875 Chandler Robbins' survey, which established the southern boundary, was approved.

Around 1900, mining interests intentionally invaded and trespassed onto reservation lands. They then sought to lease these lands from the tribes. Unable to do so, the New La Paz Mining Co. challenged the

location of the southern boundary of the reservation in order to move it north of the lands they were seeking.

A resurvey of the boundary was requested from the General Land Office. Several fraudulent surveys followed. Finally, in 1912, Guy P. Harrington's survey was approved. This survey upheld the original Robbins survey and clearly delineated the lands sought by the mining company as being within the reservation.

Frustrated in their attempts to obtain the lands they wanted, the New La Paz Mining Co. sent representatives to Washington. As a final resort they questioned the intention of the 1874 executive order, arguing that only bottom lands were intended to be included within the reservation.

Although this contradicts the determination behind Agent Tonner's original request which led to the executive order, this reasoning apparently allowed the Department of the Interior to recommend the removal of the La Paz lands.

This was carried out by Executive Order 2273 in 1915. Interestingly, the New La Paz Mining Co. went bankrupt shortly thereafter without any record of profit from their mining efforts. The only lasting effect from these events was the unjustifiable neglect of the tribes' rightful ownership of these lands.

The Colorado River Indian Tribes have long recognized the cultural and economic value of these lands to the reservation. The area's proximity to Interstate 10 enhances the range of potential development.

In 1970 the tribes funded a study which proposed the development of an historic cultural center at La Paz. This enterprise would combine a tourist attraction with the preservation of the surrounding archeological sites.

Low density residential projects as well as overnight accommodations would be ideally situated amid the beautiful desert scenery. As more senior citizens and winter vacationers continue to come to the desert, the need for this kind of development increases.

Furthermore, grazing lands could be brought into use as they have in the past, and existing gravel sites would provide needed industry and employment for tribal members.

The La Paz lands are an integral part of our reservation culturally, historically, and in the development of our future. The Bureau of Indian Affairs strongly supports the tribes in seeking restoration of these lands, and the Bureau of Land Management has approved the return of this area to the reservation.

The taking of Indian lands through the pressures of political interests is not a new story. The tribes are also aware that Congress endeavors to deal favorably and lawfully to uphold Indian rights and claims. It is this we are asking from you today. I hope that you will support us in seeking equitable legislation to restore to our reservation lands which have always belonged to the Colorado River Indian tribes. I thank you.

Senator GOLDWATER. Thank you.

Mr. DRENNAN. Mr. Chairman, with your permission I would like to ask the executive director to read into the record a letter of support from the National Tribal Chairman's Association.

Senator GOLDWATER. Yes, certainly.

But before you do, I notice on page 4 of your prepared testimony, you talk about one of the chief objections to the survey.

Without objection, your statement will be placed in the record at this time.

[The statement follows:]

PREPARED STATEMENT OF THE COLORADO RIVER INDIAN TRIBES, SUBMITTED BY ANTHONY DRENNAN, JR., CHAIRMAN

The Colorado River Indian Reservation was established by Act of Congress in 1865 in order to preserve and protect traditional tribal lands which were being threatened by the exploration and settlement of the Territory of Arizona. The Reservation was enlarged to include additional tribal lands by Executive Orders in 1873, 1874 and 1876. In 1915 nearly 16,000 acres in the southeast corner of the Reservation, known as the La Paz lands, were withdrawn from the Reservation by an Executive Order under the pretext of correcting a faulty survey. It is these lands which the Tribes now seek to have restored to the Reservation.

The Tribes have owned and occupied the lands within the Reservation, including the La Paz lands, since time immemorial. For centuries the Indians of the Colorado River have planted and harvested crops along the fertile bottom lands of the Reservation; the surrounding mesas and mountains supplied game, as well as natural vegetation useful for food and manufacture. The La Paz area contains abundant evidence of prehistoric as well as historic use. Lithic tools, ceramic shards, sleeping circles, cremation sites, and numerous trails integrate this area culturally with the rest of the Reservation. Elder Tribal members can clearly remember significant places occupied and used in their lifetime as well as identifying sites through an oral tradition which stretches far back in the history of the area.

Though settlers had been traveling through Mohave territory for several years, the first major impact on the Indian way of life occurred in 1862 when gold and other minerals were discovered in the La Paz area. Almost overnight the town of La Paz sprang up, with the flood of miners from Mexico and from points east and west. The conflict between Indian and non-Indian cultures rapidly came to a head under this sudden increase in non-Indian population.

La Paz became the Territorial point of entry through which supplies were shipped into the interior of Arizona. Ferries worked the Colorado River bringing supplies from the West Coast and transporting ore not only from the adjacent area but from mines in the interior. Roads, pack trails and a stage coach mail route tied the west coast with La Paz by 1863. Though this boom town only lasted ten years, it gave life to a large part of the open frontier and is a place of significant historical interest.

By 1866, with the end of the Civil War, the price of gold had dropped, the most easily mined gold had been taken and gold mining became uneconomical. In 1868 heavy flooding caused the river to shift its course so that the theretofore navigable lagoon on which La Paz was situated was left high and dry. The center of commerce along with the county seat was moved in Ehrenberg situated six miles south of La Paz on the main river channel. By 1870 the townsite of La Paz was nearly deserted.

After the Colorado River Indian Reservation was established, squatters and bootleggers often trespassed onto Reservation lands, causing continual problems. Several incidents involving cattle which were stolen from ranches in the area and sold to the Indians fueled the conflict between Indian and non-Indian. This conflict led to a request for additional reservation lands in order to create a buffer zone where such trespasses could more easily be controlled.

In his Annual Report dated August 8, 1873, Agent Dr. J. A. Tonner reported that,

"Continual trouble is being experienced by the squatting of Mexicans near the boundaryline of the Reservation, who tamper with the Indians, and attempt to introduce liquor among them. The only remedy I can suggest is to extend the reserve to the south to take in the abandoned town of La Paz and to the east to include in its limits all the bottom-lands between the river and the edge of the mesa."

In a supplemental report dated November 14, 1873 to the Commissioner of Indian Affairs he elaborates:

"[R]egarding enlargement of the Colorado River Indian Reservation [,] . . . the increase wanted consists of the remaining portion of the valley which the Reservation now forms a part, without, as it now exists, any natural boundaries.

"The part to be added is about six miles in length and from one to two in width, extending to within six miles of the town of Ehrenberg on the Colorado River thence northward to the present Reserve, including all the arable land of the valley and confined by the natural boundaries of mesas and mountains bounding it on the east."

By Executive Order of November 22, 1873, the Reservation was enlarged. The Reservation was further enlarged to include the La Paz lands by an Executive Order on November 16, 1874, which defined the Reservation boundaries thus:

"Beginning at a point where the La Paz Arroyo enters the Colorado River, 4 miles above Ehrenberg; thence easterly with said Arroyo to a point south of the crest of La Paz Mountain; thence with said crest of mountain in a northerly direction to the top of Black Mountain; thence in a northwesterly direction across the Colorado River to the top of Monument Peak, in the State of California; thence southwesterly in a straight line to the top of Riverside Mountain, California; thence in a southeasterly direction to the point of beginning, be, and the same is hereby withdrawn from sale and set apart as the reservation for the Indians of the Colorado River and its tributaries."

The boundary adjacent to the La Paz area was unchanged in the Executive Order of May 15, 1876.

In 1875 Chandler Robbins was hired to survey the new boundary of the Colorado River Indian Reservation as set out in the Order of 1874. On May 26, 1875 the Robbins survey was accepted and approved.

Because of the rough, insuperable terrain and the fact that a center line within the La Paz Arroyo would be washed out, it was decided that the south boundary should not be monumented by Robbins. This led to problems with squatters over the next fourteen years and played a crucial part in the events leading to the removal of these lands.

In October of 1890 the La Paz Mining Company attempted to erect a mill at the south end of the Reservation and was ordered off by Agent George Allen. Trespass continued to be a problem and a fence was finally erected along the southern boundary.

Around 1904 the location of a new mine near the Reservation caused the beginning of the efforts of the New La Paz Mining Company to obtain mineral rights to Reservation lands. A request for a resurvey was made and on May 16, 1907 Homer Santee, U.S. Deputy Surveyor, was given the contract to monument "more or less" the south thirteen miles of the Reservation. His survey was subsequently rejected for not having been done "by his own proper person."

In October of 1908 the same contract was given to John F. Hesse. Hesse's survey was suspended because he clearly violated his special instructions by having relied upon the notes of the Santee survey and not having done any of the original work himself.

The Commissioner of the General Land Office on February 21, 1910 directed William Stover to investigate the boundary problems. Stover sought to establish the La Paz Arroyo as being one-half miles north of the townsite of La Paz. Because he failed to follow the special instructions, which were to follow the field notes of the original Robbins survey and follow the boundary description in the Executive Order of 1876, his conclusions were deemed so irregular by the General Land Office that they were not accepted.

One of the chief objections to the Stover survey was that the 1874 Executive Order description could not have contemplated the La Paz Arroyo as being just north of the townsite of La Paz, a distance of six miles from Ehrenberg, because the Executive Order expressly declared that the mouth of the Arroyo was situated only four miles north or Ehrenberg. The Surveyor General of Arizona found Stover's conclusion as to the location of the La Paz Arroyo not in compliance with either the Executive Orders of 1874 and 1876 or the regulations governing resurveys.

On February 9, 1912 Guy P. Harrington was awarded a contract to resurvey the South boundary. His survey affirmed and upheld the original Robbins survey. He based his conclusion as to the true location of the La Paz Arroyo on evidence found at a point designated in the Arroyo by Robbins' field notes and verified his field work with first hand testimony from people in the area who showed him the remains on the site of the 1890 fence and an old building which he was able to find on earlier maps.

Around 1912 the New La Paz Mining Company offered to lease mineral lands in the La Paz area from the Colorado River Tribes, thus clearly recognizing that the lands were within the Reservation boundaries. However, at that time there was no authority for leasing minerals on lands reserved by Executive Order. A meeting between the New La Paz Mining Company and other mining interests was held where it was decided to send a representative to Washington and submit a plan whereby the companies might pay royalties to the Indians on the minerals.

Superintendent Babcock made several arrests for trespass in November of 1912. Through pressure from Washington the New La Paz Mining Company was able to get an injunction enjoining the Superintendent from interference with their work as long as "such persons are doing assessment work or any other work as might be required by law for the safety of the claims and so long as no removal of the ores are attempted." The New La Paz Company stressed the fact that they were operating in good faith throughout the settlement of the controversy that they had in fact created.

On December 17, 1912, pursuant to directions from the Secretary of the Interior, the Commissioner of the General Land Office ordered hearings to be held in Yuma, Parker and Phoenix to determine the true location of the La Paz Arroyo, and, if more than one arroyo existed, which one was designated in the Executive Orders of 1874 and 1876.

On May 27, 1913, the Harrington survey was accepted by the Phoenix Land Office, thus affirming the south boundary along the La Paz Arroyo as surveyed by Robbins. This decision was appealed by the New La Paz Mining Company to the Commissioner of the General Land Office. The appeal was dismissed on August 18, 1913, but not without a recommendation that the Executive Order of 1876 should be revised to include "only arable lands" and not lands mineral in character.

Although the decision supported the Tribes' rightful claim to the land in question, the New La Paz Mining Company exerted skillful and persistent political pressure in support of its claims. A bill was drafted by the Department of the Interior and presented to the Honorable John Stephans, Chairman of the House Committee of Indian Affairs. The bill provided for the disposal of mineral lands on the Colorado River Indian Reservation at $10 an acre. The transmittal letter from the Department of the Interior stated that while there was no doubt that the lands were within the Colorado River Indian Reservation, the Department felt that lands upon which mineral claims had been made were not suited for Indian purposes and that the money could be better used by the Indians. The bill also reiterated that the New La Paz Mining Company had acted in good faith. The bill explicitly excluded "lands containing coal, oil, or other non metalliferous minerals" from disposal. The bill apparently either was never submitted or died in committee.

On November 19, 1915, the decision of the General Land Office accepting the Harrington survey locating the La Paz Arroyo was reversed by the Secretary of the Interior Andrieus A. Jones. Reasoning that the Executive Order of 1874 intended only to include bottom lands and not the adjacent mesas or uplands, the Secretary accepted Stover's conclusion that the true La Paz Arroyo was north of the town of La Paz. Interestingly, other non-arable lands included in the 1876 Executive Order were not brought under consideration, only those lands sought by the New La Paz Mining Company were deleted. Although this conclusion was inconsistent with the express terms of the 1874 Executive Order, it was an expedient solution to pacify the mining interests. A recommendation was made to the President which resulted in the deletion of the La Paz area by Executive Order 2273 of November 22, 1915. The stated purpose of the Order was to "correct the error in locating said southern boundary line and in order to conform such line to the public system of surveys recently extended over these lands." The Order declared the boundary to be thus:

"[C]ommencing at a point on the left bank of the Colorado River marked by an iron post 3 inches in diameter stamped C.R.I.R. on brass cap thereof as established by the United States surveyor in 1912; thence easterly along the line of iron posts established by said surveyor to the corner of townships 3 and 4 north, ranges 21 and 22 west, G. & S.R.M.; thence north along the range line to established corner of sections 13, 18, 19, and 24, township 4 north, ranges 21 and 22 west; thence easterly along the established section lines to the closing corner of sections 18 and 19, * * *."

The Order blatantly ignored the fact that the only officially accepted public surveys, those of Harrington and Robbins, placed the Arroyo two miles south of La Paz. Curiously, the Order did accept the Harrington-Robbins conclusions as to

the location of the mouth of the Arroyo. However, after following Harrington's line for approximately three miles, the 1915 boundary inexplicably leaves the arroyo followed by Harrington and heads due north along section lines for three miles, thereupon to head due east along section lines for approximately seven miles more until intersecting the eastern boundary. A quick glance at a map belies the assertion that this line even remotely traces an existing arroyo.

Perhaps the most ironic fact to arise out of this controversy is that in spite of the successes of the New La Paz Mining Company in perfecting their claims they eventually went bankrupt with no evidence of ever yielding any profits. In fact no subsequent mining has ever taken place on these lands, nor have the Colorado River Indian Tribes ever received any compensation for these lands. The only lasting effect is that the lands continue to be wrongfully excluded from the Reservation.

In 1968 the Colorado River Indian Tribal Council met with the Department of the Interior in Parker, Arizona to request that research be carried out and steps be taken which would restore the La Paz lands to the Reservation. This work was done as part of a Special Project of the Bureau of Indian Affairs.

In 1974 the Colorado River Indian Tribal Council issued a resolution asking that necessary research toward defining the Tribes' rights to the La Paz lands be given high priority along with the necessary steps leading to a full restoration of these lands. A complete case analysis was prepared by Trust Protection of the Bureau of Indian Affairs which strongly supported the Tribes' just and rightful claim to the La Paz lands. A report from the Arizona State Office of the Bureau of Land Management approved a return of these lands to the Reservation, citing the many varied resources that could be developed on the lands.

These two reports, along with the Tribal resolution and a resolution issued in 1975 by the National Tribal Chairman's Association supporting the restoration of the La Paz lands to the Colorado River Indian Reservation were submitted to the Office of the Solicitor, Department of the Interior in 1975 for consideration and recommendation. The Associate Solicitor of Indian Affairs recommended a legislative remedy, finding that "a compelling case can be made to support Congressional action for restoring the area."

In 1978 Standard Oil of Ohio applied for certain rights-of-way through a portion of the La Paz lands, recognizing that the Tribes were pursuing a restoration of these lands and acknowledging their pending claims. In 1979 the Colorado River Indian Tribal Council issued another resolution stating the Tribes' willingness to negotiate such rights-of-way and reaffirming its earlier request that the La Paz lands be restored.

A draft bill was drawn up by the Associate Solicitor of Indian Affairs in 1979 supporting the Tribes' position. In 1980 Senate Bill 2317 was introduced into Congress, citing that the La Paz lands "were erroneously removed" and should be restored to the Colorado River Indian Reservation. This bill was reintroduced in 1981.

Under a recommendation from the Colorado River Indian Tribal Museum that relic hunters and vandals were damaging important historic sites around La Paz, the Colorado River Indian Tribal Council passed a resolution in 1969 asking the Department of the Interior to preserve the archeological sites on the Reservation pursuant to the 1966 Antiquities Act. This was followed in 1970 by two further resolutions. The first requested that the townsite of La Paz be preserved as an Historic Site and the second requested that the Old La Paz Cemetery, which lay within the deleted lands, be restored to the Reservation for historic preservation. The townsite of La Paz was declared a National Monument in 1970.

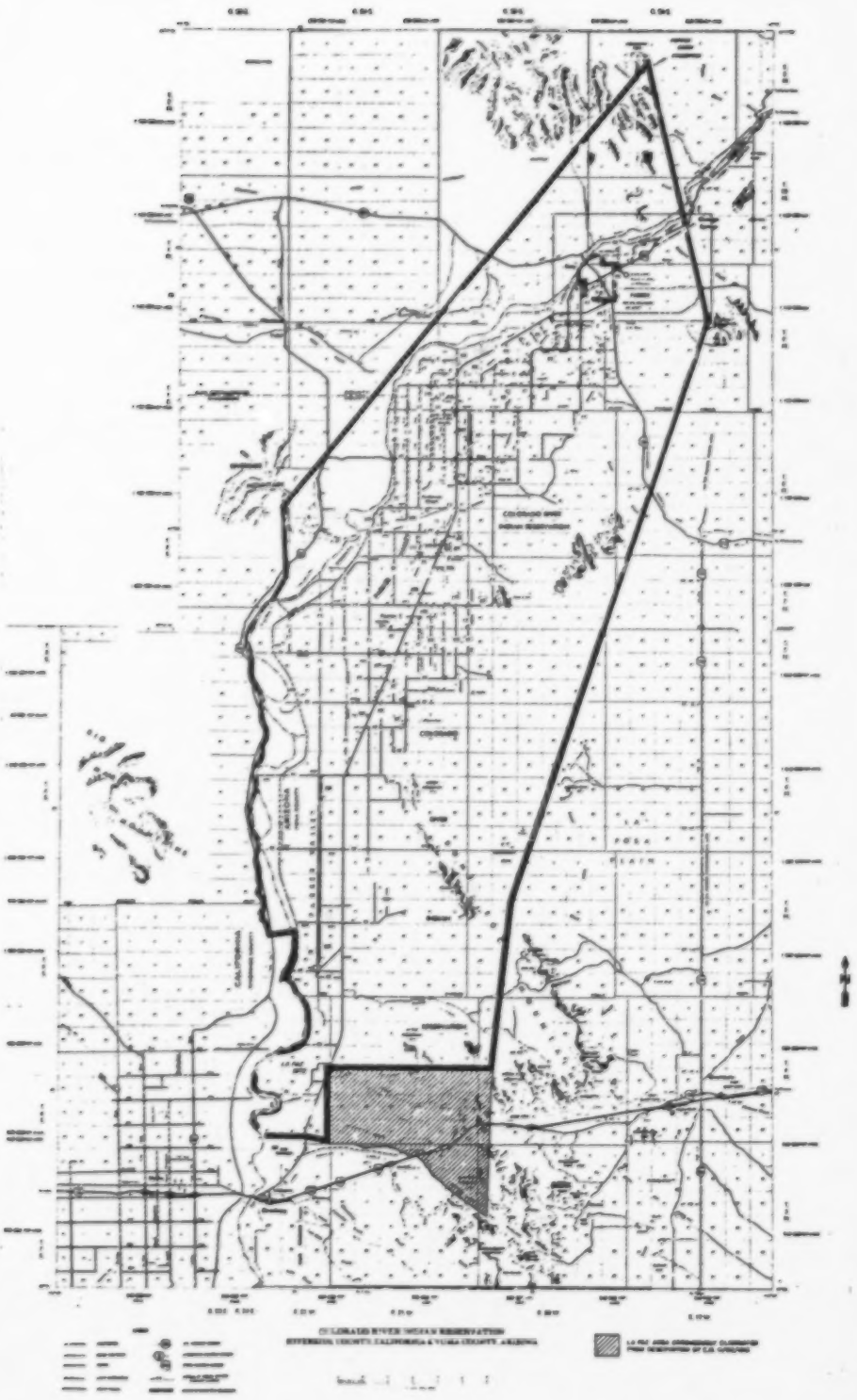
Matching monies from the Colorado River Indian Tribes Council and the National Parks Service were used in 1971 to fund a study to investigate the historic and interpretive potential of the area. Matching funds were also used to carry out Phase I and II of the Old La Paz Development Project. The report findings stated that the townsite of La Paz should be excavated along with contemporaneous Indian campsites which lay within the deleted area adjacent to the townsite because the history of the area offered a unique opportunity to study the acculturation of the Indian people. If the historic integrity as well as the appearance of the area were maintained, the Tribes would have an important economic as well as cultural resource. The report further recommended that the constant threat of flooding from the La Paz Mountains militated against excavation and development until flood control work could be carried out.

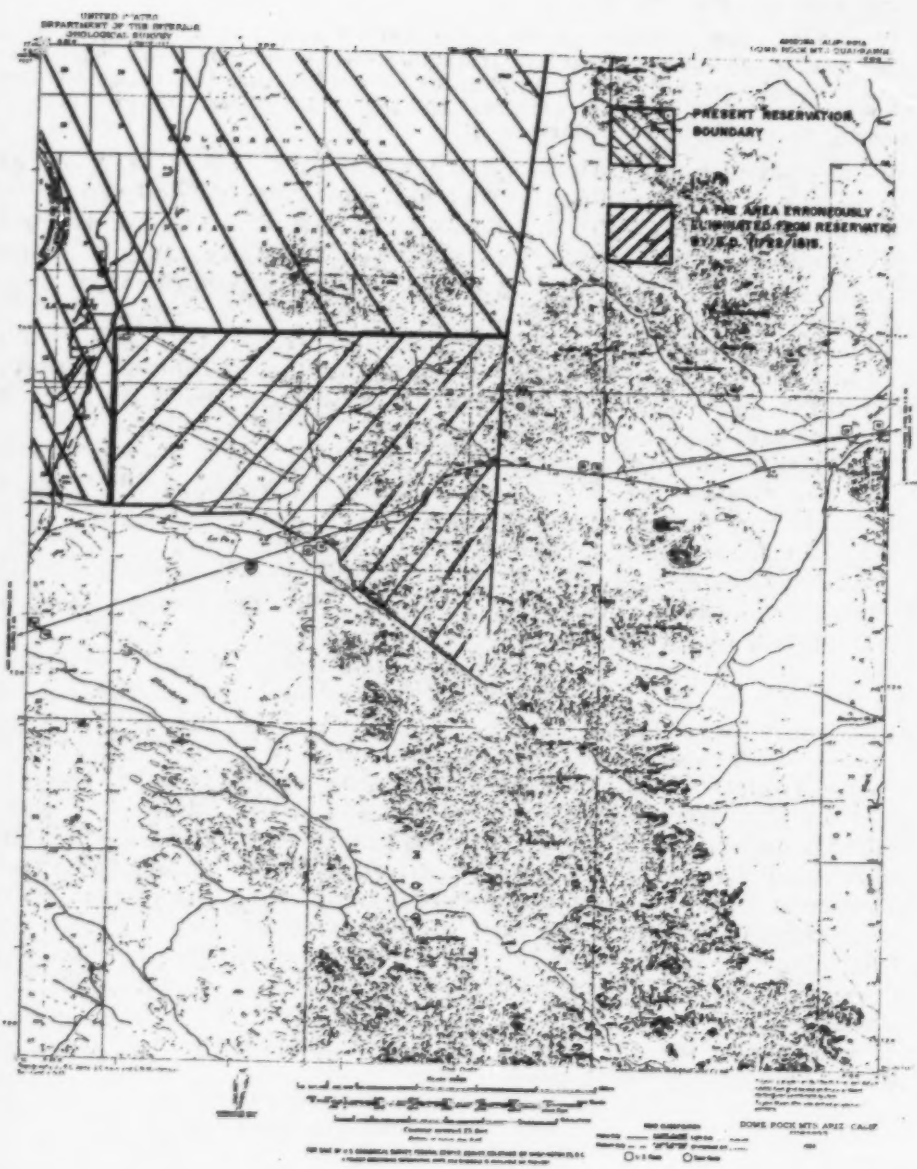
The Tribes are looking for new ways to develop the resources of the Reservation and provide employment to Tribal members. With the restoration of the La Paz lands the Tribes could proceed with the flood control work which involves these lands as well as with the necessary archeological work. The Tribes could build a major visitor attraction which would include an interpretive center and Tribal enterprises within the same complex. The area is close to many tour routes and to Interstate 10 which would draw many visitors.

The proximity of the area to Interstate 10 enhances the range of development opportunity. The scenic value of the land makes it an attractive site for overnight accommodations for travelers. Low density residential development and trailer courts are needed in the area, especially for senior citizens, either as permanent retirement or winter resort residences.

The La Paz lands can also be developed for grazing, as they have in the past. Gravel sites in the area could provide needed future industry and employment on the Reservation.

Although the facts of historical ownership and legal right strongly support the Colorado River Indian Tribes' claim to the La Paz area, it is not for these reasons alone that we seek a restoration of these lands. The La Paz lands are an integral part of the Reservation lands long inhabited by the Tribes. As they hold a significant place in our past, they hold an important place for the future development and benefit of the Colorado River Indian Tribes. We ask for your support in seeking the just and equitable restoration of these lands to our Reservation. We thank you for your consideration.




PRESENT RESERVATION BOUNDARY
A PIE AREA ERRONEOUSLY
ELIMINATED FROM RESERVATION
BY E.O. 1/22/1915.

Senator GOLDWATER. You say:

One of the chief objections to the Stover survey was that the 1874 Executive order description could not have contemplated the La Paz Arroyo as being just north of the townsite of La Paz, a distance of six miles from Ehrenberg, because the Executive order expressly declared that the mouth of the Arroyo was situated only four miles north of Ehrenberg.

I have aerial photographs that I have taken of that. I have visited the old townsite many, many years ago with my uncle who lived there. I have always figured it was 6 miles north of arroyo and not 4 miles.

Reading further along, in the testimony that is, in later acts by the Department and later surveys this bears out what you are saying.

Please proceed.

Mr. DRENNAN. Mr. Chairman, going on further, this description was not along the surveys of the Robbins' survey. Different surveys have taken place and have reestablished and have proven that the 6 miles was not, but that it was 4 miles.

This is by Robbins and Harrington.

Senator GOLDWATER. Whether it is 4 miles, 6 miles, or whatever, I think it is pretty generally understood——

Mr. DRENNAN. Wherever the arroyo is, that is it.

Senator GOLDWATER. Yes; in fact, I think there is enough left up there that you can actually go up and measure it. The measurements, I think, have been verified since.

I see in 1915 that the General Land Office reversed the Harrington survey, so it has been going back and forth. But I do not think that is of particular importance.

But I just wanted to reaffirm your position on that.

Mr. BLOXHAM. I had nothing to comment regarding your remarks, Senator, although I would take the opportunity to request that if a report is being sought regarding the extent and nature of the legal claims to the lands by the tribes, I would request the opportunity to be able in the next week or so to submit a short letter stating the tribe's position regarding the tribes' legal rights to the lands.

Although we have detailed views as to the history there, we have not stated our position as to the nature of our legal claims in the area.

Senator GOLDWATER. Without objection, so ordered.

[Subsequent to the hearing the following correspondence was received:]

COLORADO RIVER INDIAN TRIBES,
COLORADO RIVER INDIAN RESERVATION,
October 18, 1982.

Re S. 1652; Restoration of La Paz lands to Colorado River Indian Reservation.

Hon. BARRY GOLDWATER,
4350 Camelback Road,
Phoenix, Ariz.

DEAR SENATOR GOLDWATER: As I indicated to you at the Senate Select Committee hearing on S. 1652 held on August 19, 1982, I would like to take the opportunity to present the position of the Colorado River Indian Tribes regarding their legal relation to the La Paz lands which are the subject of S. 1652.

The lands which the Tribes are seeking to have restored by Congress to the Colorado River Indian Reservation, the La Paz lands, have been inhabited by members of the tribes of the Colorado River, principally the Mohave, since time immemorial. Although it is beyond the scope of this letter, voluminous factual evidence supports this assertion of long-time use and habitation of the area, and it does not appear to be in dispute.

By virtue of their long-time habitation ("use and occupancy") of the La Paz lands, the Colorado River Indian Tribes, as successor in interest to the claims of the Mohave and other Colorado River tribes, hold the lands by aboriginal title, sometimes called "Indian title," or "Indian right of occupancy." See, *United States* v. *Santa Fe Pacific Ry.*, 314 U.S. 339, 345 (1941); F. Cohen, Handbook of Federal Indian Law 492 (3d ed., 1982).

Because aboriginal title has been much maligned in recent years, it must be explained that it is every bit as complete and proprietary as a fee simple absolute. Aboriginal title is a freehold estate with a right of inheritance, but is held under tribal tenure, not federal or state tenure. It is sovereign ownership, limited only by the restraint on alienation imposed by the federal government. *Worcester* v. *Georgia*, 31 U.S. (6 Pet.) 515, 543–545 (1832); *Cherokee Nation* v. *Georgia*, 30 U.S. (5 Pet.) 1, 17 (1831); *Johnson* v. *McIntosh*, 32 U.S. (8 Wheat.) 543 (1823). See generally, R. Barsh & J. Henderson, The Road 31–49 (1980); Henderson, Unraveling the Riddle of Aboriginal Title, 5 Am. Indian L. Rev. 75 (1977); Bloxham, Aboriginal Title, Alaskan Native Property Rights, and the Case of the Tee-Hit-Ton Indians, 8 Am Indian L. Rev. 299 (1980). See also, 25 U.S.C. section 177 (federal restrain on alienation.)

Except where it has been granted away, the United States (and the states in the original thirteen colonies) hold a "naked" fee title to aboriginal lands, sometimes also called a "right of preemption." *Beecher* v. *Wetherby*, 95 U.S. 517, 525 (1877); *Clark* v. *Smith*, 39 U.S. (13 Pet.) 195, 201 (1839); *Worcester* v. *Georgia*, supra; *Fletcher* v. *Peck*, 10 U.S. (6 Cranch) 87, 142–143, 145–147 (1810). And see, Trade and Intercourse Act of 1790, Act of July 22, 1790, ch. 33, sec. 4, 1 Stat 137 (preemption right of states; federal restraint on alienation.) Transfer of such naked fee subject to aboriginal title conveys no more than the preemption right, with no right to possession, until the tribal right is obtained by the United States. *Santa Fe Pacific Ry.*, supra; *Buttz* v. *Northern P. R. Co.* 119 U.S. 55, 66 (1886); *Beecher* v. *Wetherby*, supra; *Fletcher* v. *Peck*, supra.

Implicit in the concept of aboriginal title, and explicit in most of the sources, is that most of the rights to land within the United States were derived at one time from cessions of those property rights from tribes and that tribes retain those rights which were never ceded or otherwise relinquished. See *Northern Railroad* v. *United States*, 227 U.S. 355, 366 (1913); *United States* v. *Winans*, 198 U.S. 371, 381 (1905); Cohen, Original Indian Title, 32 Minn. L. Rev. 28 (1947); Barsh & Henderson, Contrary Jurisprudence: Tribal Interests in Navigable Waterways Before and After *Montana* v. *United States*, 56 Wash. L. Rev. 627 (1981); Bloxham, Tribal Sovereignty: An Analysis of *Montana* v. *United States*, 8 Am. Indian L. Rev. 175 (1980). At no time have the Colorado River Indian Tribes, or their predecessors, ceded or otherwise parted with their title to the lands of the La Paz area; nor have they ever alleged that such lands had been taken by or under the authority of the United States, or accepted compensation for any alleged taking of such land. The Tribes, therefore, retain that with which they never have parted: their ownership of the lands in the La Paz area.

When the federal government reserves aboriginal lands to a tribe, it reserves only its naked fee (preemption) interest, and does not thereby affect the tribal aboriginal right, any more than a transfer of the naked fee would. Indeed, some reservations have been composed of land reserved by tribes without the corresponding reservation of the federal interest. See, e.g., *United States* v. *Holt State Bank*, 270 U.S. 49 (1926). Neither should the return of the federal interest to the public domain be construed to affect an underlying aboriginal claim to land. The 1915 Executive Order whereby the La Paz lands were deleted from the Colorado River Indian Reservation therefore should not be seen as constituting a taking of or in any way affecting the Tribes' rights to the La Paz lands. As the preceding authority demonstrates, even an outright grant of such lands by the federal government would not affect the Tribes' title to these lands.

The Tribes might also base their claim to the La Paz lands upon the federal action of reserving the lands to the Tribes in 1874 and 1876. It should be noted that the Associate Solicitor for the Bureau of Indian Affairs was of the opinion that the Tribes' claims, under these orders, are valid but clouded by the 1915 Executive Order. See, Memorandum dated June 12, 1975 to Director, Office of Trust Responsibilities, Bureau of Indian Affairs, from Associate Solicitor for Indian Affairs. Notwithstanding this, the Tribes feel that the truest and best basis for their current and historical sovereign claims to the La Paz lands is aboriginal. Having never relinquished these lands, or suffered them being taken, the Tribes still own them.

I welcome this opportunity to submit on behalf of the Colorado River Indian Tribes our views regarding the Tribes' claims to the lands in the La Paz area. We thank you for your support of our endeavor to have the lands restored to our Reservation. If I may be of any further assistance in explaining or more fully delineating the Tribes' claims, or in any other way, please feel free to contact me.

Respectfully yours,

STEVEN J. BLOXHAM,
Tribal Attorney.

Mr. DRENNAN. The person who testified before me requested that this be extended, but I would like to note in the record that a similar bill in 1979 or 1980 was introduced. I wondered if this did not give enough time for everyone to prepare some statements.

Senator GOLDWATER. Yes, I remember that.

In view of the statement by the Department, they have asked for 60 days extension. Is that going to mean a lot of difference to you whether we decide it this year or get it done properly early next year?

You have waited a long time.

Mr. DRENNAN. Yes, a few more months might not make any big difference.

Senator GOLDWATER. This is a justifiable request by the tribes. I think the only question will be compensation for those people who might be using some of your land for gravel and rock or who might have mineral claims.

I do not believe there are many of those down there. I think it merely means returning land, as we have done in the past. We did it for the tribes' interest to cross the Colorado when the Palo Verde matter was before us.

If we have to, we will reintroduce the bill next year. If we can get the testimony complete by this year, then we will do it this year.

Mr. DRENNAN. Senator, we thank you.

Senator GOLDWATER. We thank you.

Mr. DRENNAN. With your permission, I would like to read into the record the National Tribal Chairmen's Association's letter of support.

Senator GOLDWATER. Certainly; please proceed.

Mr. SAVILLA. My name is Elmer Savilla. I am executive director for the National Tribal Chairmen's Association.

The association represents the federally recognized tribal governments of the Indian tribes. At our last meeting we heard from Chairman Drennan and as a result of his testimony and his talk with the board of directors, the National Tribal Chairmen's Association has totally endorsed the tribes' request for the return of their lands.

The letter reads as follows:

I respectfully request that this letter be considered as testimony in favor of Senate Bill 1652, "Colorado River Reservation Land Restoration", from the united membership of the National Tribal Chairmen's Association.

The lands under consideration in this bill, totaling almost 16,000 acres, are part of the aboriginal homelands of the Colorado River Yuman group which includes the Chemehuevi and Mojave tribal groups now located on the Colorado River Reservation. These groups along with the Cocopah, Quechan, and Maricopa, lived along the banks of the Colorado River for centuries.

Only recently in history was the dominant society able to declare that certain lands were no longer Indian lands, and that further, only certain defined and well described lands were to be known as Indian "reservations."

The particular lands now known as the "La Paz area" were made part of the Colorado River Indian Reservation by Presidential Executive Order in 1874.

For anyone to assert that these are no longer "Indian Lands," is to belie the fact that they were never "not Indian Lands." Unilateral decisions established what turned into temporary boundaries, subject to the need and wants of the non-Indians, as in the South Dakota Black Hills case.

The officers and the board of directors of the National Tribal Chairmen's Association, in a duly constituted meeting in Washington, D.C. on August 4, 1982, agreed with the chairman of the Colorado River Tribes, Mr. Tony Drennan, that the time has now come for the Congress of the United States to finally rectify the long-standing errors of survey and problems of trespass by legislatively recognizing the historical right of the Colorado River Tribes to the La Paz area lands.

It must be admitted that the Colorado River Tribes are dedicated to the economic development of all their land resources as evidenced by their tribally owned CRIT Farms.

CRIT Farms enjoys a nation-wide reputation as a well managed, successful tribal operation. The addition of 16,000 acres to tribal lands would add to their ability to provide for the long-term socio/economic development and benefit of their tribal members, and in turn would provide encouragement and example to Indians everywhere.

Therefore, Senator Goldwater, on behalf of the board of directors and the entire membership of the National Tribal Chairmen's Association, we urge that this committee endorse the passage of S. 1652.

Senator GOLDWATER. Thank you.

I am glad that the Chairmen's Association has taken a stand. It will be a great help.

Is there other testimony?

Mr. DRENNAN. Mr. Chairman, that concludes our testimony.

Senator GOLDWATER. Are there other people who would care to testify on this?

If not, our hearing will stand in adjournment. We will keep you posted as to what we hear. We will give you copies of any correspondence we get as a result of this morning's hearing.

[Whereupon, at 9:30 a.m., the hearing was adjourned.]

APPENDIX

ADDITIONAL MATERIAL RECEIVED FOR THE RECORD

August 12, 1982

1982 AUG 16 PM 4 49

P. O. Box 50
Ehrenberg, Arizona
85334

Hon. William S. Cohen, Chairman
Select Committee on Indian Affairs
United States Senate
Washington, D. C. 20510

RE: S. 1652

Dear Senator:

We, being property owners and involved in mining in the vicinity of the land under discussion, hereby wish to register strong objections to the S. 1652 bill as proposed.

1. The people in the area being affected were not apprised of the impact.

2. The language of the bill is very unclear as to the specifics of property rights.

3. It does not spell out compensation for proven mineral reserves or improvements and equipment attached to mining claims.

4. I am familiar with most of the parties engaged in mining and industry in this area in question and none were aware of this hearing nor the one previous.

We feel that it would be prudent to terminate any action on this bill until field studies and local input can be collected.

Please forward results of this hearing and notify us of further action, if any.

Respectfully submitted,

Ted Brock Gae Brock

Ted Brock Gae Brock

cc: Hon. Barry Goldwater
Hon. Mark Andrews
Hon. Slade Gorton
Hon. John Melcher
Hon. Daniel K. Inouye
Hon. Dennis DeConcini

ROBERT B BAYLES
P.O.Box 47
EHRENBERG, ARIZONA 85334
(602) 923-7887

1982 AUG 17 AM 10 38

BEFORE THE UNITED STATES SENATE

SELECT COMMITTEE ON INDIAN AFFAIRS

Select Committee's Consideration
of Senate Bill 1652 - Hearing date
August 19, 1982, Russell Senate
Office Building, Washington, D. C.

Statement of : Robert B. Bayles
P. O. Box 47,
Ehrenberg, AZ.

My name is Robert B. Bayles and I have lived and done business in Ehrenberg for twenty five years. I am not able to personally appear for this hearing, and ask that this statement be substituted as my oral testimony.
I am opposed to Senate Bill 1652, and request the committee take no further action on same.

Much of these 25 years, as well as much of my finances have been spent in developing various mining claims in the La paz area. Much time and money has been spent on the development of a non-metallic mineral, which was on the strategic list during the last war. We have assembled considerable equipment, and are in the process of erecting a mill to process this mineral.

We have a large group of gold placer claims which are under lease to a mining company. A substantial mill has been erected specifically for this operation.

There has been no publicity in the Ehrenberg area, and there are a number of local people who would be affected by its passage.

ROBERT B BAYLES
P.O. BOX 47
EHRENBERG, ARIZONA 85334
(602) 923-7827

We have conformed to State andFederal mining laws and to the recent rulings of the Bureau of Land Management. The entire area involved is rocky, mountainous terrain, suitable for nothing but recovery of the various minerals it might contain. We feel the fact that we have been permitted to operate these various mining properties for some 25 years, expending much of our time and financial resources, assuming that we were operating on public domain, establishes our rights to these properties.

We feel that disregarding our rights to these properties, is the equivalent to confiscation of our properties.

Respectfully submitted,

Robert B Bayles

NATIONAL CONGRESS OF AMERICAN INDIANS

202 E STREET, N.E., WASHINGTON, D.C. 20002 (202) 546-1168

EXECUTIVE DIRECTOR
Ronald P. Andrade
Luiseno-Diegueno

EXECUTIVE COMMITTEE

PRESIDENT
Joe De La Cruz
Quinault

FIRST VICE-PRESIDENT
Ralph Eluska
Aleut

RECORDING SECRETARY
Ella Mae Horse
Cherokee

TREASURER
Hollis D. Stabler, Jr.
Omaha

AREA VICE PRESIDENTS

ABERDEEN AREA
Robert Chasing Hawk
Cheyenne River Sioux

ALBUQUERQUE AREA
Guy Pinnecoose, Jr.
Southern Ute

ANADARKO AREA
Newton Lamar
Wichita

BILLINGS AREA
E.W. (Bill) Morigeau
Salish-Kootenai

JUNEAU AREA
Clifford A. Black
Eskimo

MINNEAPOLIS AREA
Gordon Thayer
Lac Courte Oreilles/Ojibway

MUSKOGEE AREA
Perry Wheeler
Cherokee

NORTHEASTERN AREA
Elmer John
Seneca

PHOENIX AREA
Anthony Drennan
Colorado River Indian Tribes

PORTLAND APEA
Russell Jim
Yakima

SACRAMENTO AREA
Juanita Dixon
Luiseno

SOUTHEASTERN AREA
Eddie Tullis
Poarch Band of Creeks

RECEIVED AUG 19 1982

August 18, 1982

Senator William S. Cohen
U.S. Senate
Washington, D.C.

Dear Senator Cohen:

On behalf of the nearly 200 member tribes of the National Congress of American Indians, I want to express my wholehearted support for Senate Bill No. 1652, the "Colorado River Reservation Land Restoration".

The membership of NCAI has many times in the past, gone on record in support of various tribes who have sought to restore lands that were by various methods, unjustly taken from them.

In the case of the Colorado River Tribe, there is clear documentation of the events which led to the unrightful taking, in 1915, of nearly 16,000 acres in the southeast corner of the reservation, known as the La Paz area.

This case is another example of an interest group, in this case, the New La Paz Mining Company, exerting shrewd and persistent political pressure to obtain reservation land for their own purposes.

We hope that your Committee and the U.S. Congress will respond favorably and return the land to the Colorado River Tribe as provided for in S.1652.

Sincerely,

Ronald P. Andrade

Ronald P. Andrade, Executive Director
National Congress of American Indians

○